

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

In Re:)	IN CHAPTER 7 PROCEEDINGS
)	
CHEMETCO, INC.,)	BK 01-34066
)	
Debtor.)	

**OBJECTIONS OF INTERCO TRADING COMPANY TO THE TRUSTEE'S
APPLICATION TO APPROVE SETTLEMENT**

TO: Honorable Kenneth J. Meyers, United States Bankruptcy Judge

COMES NOW Creditor and Party in Interest Interco Trading Company ("Interco") herein, by counsel, and respectfully objects to the Trustee's Application to Approve Settlement dated August 23, 2012 (the "Settlement Application") on each of the following grounds:

1. The Settlement Application seeks to approve a settlement between the Trustee herein, Paradigm Minerals and Environmental Services, LLC ("Paradigm"), the United States Environmental Protection Agency ("USEPA"), the Illinois Environmental Protection Agency ("IEPA") and Commerce Bank ("Commerce"). The Settlement Application attaches a proposed settlement agreement to be effective upon Bankruptcy Court approval as of July 30, 2012 (the "Settlement Agreement") which amends and substantially restates a prior asset purchase and processing agreement dated as of July 29, 2009 (the "Agreement"). The Settlement Agreement also contemplates the dismissal of the pending appeal of the Order originally approving the Agreement which was filed by IEPA in the United States District Court for the Southern District of Illinois. As such, the Settlement Application effectively proposes a final Bankruptcy Court approval of the Agreement as amended by the Settlement Agreement and of the Settlement Agreement itself.

2. Interco objects to the Settlement Application on the grounds that the Settlement Agreement should not be approved by this Court. The Settlement Agreement excludes any consideration

of parties which previously have alleged to be Potentially Responsible Parties by IEPA and USEPA pursuant to Notices issued on or about November 30, 2011 and February 17, 2012. Interco is such an allegedly Potentially Responsible Party although Interco has denied and denies any and all liability for remediation or other charges and costs relating to the Chemetco site.

3. Interco submits that parties who previously had contact with the Chemetco site should be included and considered in conjunction with the Settlement Application and its related underlying documents. Specifically and without limitation, Interco respectfully submits that a fair and reasonable percentage of the proceeds of any sales of product and materials at the Chemetco site should be dedicated to any costs of remediation for any alleged actions occurring before the filing of the Chemetco case. Interco believes that there is substantial value to the product and materials remaining on the Chemetco site in the amount of millions of dollars potentially sufficient to cure any alleged remediation costs and expenses. The Settlement Application and underlying Settlement Agreement, however, dedicate mandatory distribution of all proceeds to events occurring after the date of the Agreement and the Settlement Agreement further provides with respect to events occurring prior to the filing of the Chemetco bankruptcy that only if there are excess proceeds remaining after termination of the Settlement Agreement such proceeds “may be used to remediate any environmental problem or condition existing on the site prior to the filing of Chemetco’s bankruptcy proceeding” (Emphasis added) Paragraph 1.5.2(d) of the Settlement Agreement. Interco respectfully submits that failure to dedicate a fair and reasonable portion of proceeds from materials remaining on the site to a mandatory fund to remediate any conditions existing at the site prior to the filing of the Chemetco bankruptcy is improper. Furthermore, for USEPA and/or IEPA to hold and control substantial funds potentially for years without an obligation to make distribution for remediation of pre-filing events is prejudicial to the alleged PRPs and improper

4. Interco further objects to the proposed formulas for distribution of funds set forth in Paragraph 3 of the Settlement Agreement for, among other reasons, the failure of this Settlement Agreement to provide funds for correction and/or remediation of conditions exiting on the Chemetco site as of the date of filing of the Chemetco bankruptcy and further, objects to the failure of the Settlement

Agreement to provide adequate and sufficient grounds to justify those distribution formulas. As such, Interco respectfully submits that the Settlement Application fails to comply with applicable provisions of the Bankruptcy Code and Rules of Bankruptcy Procedure including without limitation Rule 9019 of the Rules of Bankruptcy Procedure.

5. Interco further objects to the Settlement Application and underlying Settlement Agreement to the extent that in Paragraph 11 of the Settlement Agreement, all parties to the Settlement Agreement receive broad releases from any and all claims whatsoever.

6. Interco further objects to the Settlement Application and underlying Settlement Agreement to the extent that, pursuant to Paragraph 12 of the Settlement Agreement, said Settlement Agreement purports to bind all parties including without limitation the bankruptcy estate and the Trustee of the estate.

7. Interco further objects to the Settlement Agreement and the Settlement Application on the grounds that, while the Settlement Agreement provides in Paragraph 15 of the Settlement Agreement that the Bankruptcy Court shall retain jurisdiction to determine “any dispute or controversy with respect to the interpretation and or enforcement of this Settlement Agreement”, the Settlement Application and approval of the Settlement Agreement, the underlying Agreement to the extent it remains in partial force and effect and dismissal of the appeal will effectively deprive the Bankruptcy Court of any jurisdiction over events occurring at the Chemetco site for a period of at least seven (7) years. Thus the Settlement Application and Settlement Agreement would effectively deprive the Bankruptcy Court of continuing control and jurisdiction over subsequent events in this Bankruptcy case.

8. Interco further objects to the Settlement Application and Settlement Agreement on the basis that Applicant Trustee has failed to demonstrate a sufficient basis for approval of that Application and the underlying Settlement Agreement.

9. Interco further objects to the Settlement Application and Settlement Agreement as it appears that the proposed distribution scheme could result in a payment to Commerce Bank of amounts in excess of any allowed secured claim the bank may hold.

10. Interco further objects to the Settlement Application and Settlement Agreement on the grounds that the provisions of same do not substantiate the numerous facts set forth therein including without limitation the current amount of Commerce Bank's allowed secured claim.

WHEREFORE, premises considered, Creditor and Party In Interest Interco respectfully prays that the Settlement Application be denied, that costs with respect to this proceeding be assessed against Applicant Trustee and for such further and other relief as the Court finds appropriate under the circumstances upon a hearing on the Settlement Application.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 12th day of September, 2012 a copy of the foregoing was served electronically on all parties receiving notice via the Court's CM/ECF system, by regular United States mail on all parties listed on the current Creditor Matrix in the Chemetco bankruptcy, and by either electronic mail or regular United States mail or both on all parties listed on Exhibit A attached hereto.

/s/Brian W. Hockett

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